

AMENDED IN SENATE MARCH 31, 2009

SENATE BILL

No. 320

Introduced by Senator Corbett

February 25, 2009

An act to amend Sections 1716 and 1717 of the Code of Civil Procedure, relating to judgments.

LEGISLATIVE COUNSEL'S DIGEST

SB 320, as amended, Corbett. Judgments: foreign-country money judgments.

Existing law, *the* Uniform Foreign-Country Money Judgments Recognition Act, provides that foreign-country judgments that grant or deny recovery of a sum of money and that are final and conclusive are enforceable in California, with specified exceptions. The act excepts foreign-country judgments from its provisions in certain instances, including when the judgment was rendered under a system that does not provide impartial tribunals or the court lacked jurisdiction. The act prohibits nonrecognition of a foreign judgment based on a lack of personal jurisdiction if certain bases of personal jurisdiction are present.

This bill would additionally except from recognition under the act a ~~defamation judgment obtained in a jurisdiction outside the United States, unless the court in this state first determines that the defamation law applied in the foreign court's adjudication provided~~ *foreign-country judgment if a court of this state has determined that the defamation law applied by a foreign court in adjudicating a claim of defamation does not provide* at least as much protection for freedom of speech and the press ~~in that case as would be~~ *as* provided by both the United States and California Constitutions. The bill would provide ~~that a court of this state has personal jurisdiction over any person who obtains a judgment~~

~~in a defamation proceeding outside the United States against any person who is a resident of California, or is a person or entity amenable to jurisdiction in California who has assets in California or may have to take actions in California to comply with the judgment, for the purposes of rendering declaratory relief with respect to that person's liability for the judgment, or for the purpose of determining whether the judgment should be deemed nonrecognizable pursuant to the act, if the publication at issue was published in California, and the defendant has assets in California that might be used to satisfy the foreign defamation judgment or may have to take actions in California to comply with the foreign defamation judgment, if a judgment was rendered in an action for defamation in a foreign country against a person who is a resident of California or a person or entity amenable to jurisdiction in California, and declaratory relief with respect to liability for the judgment or a determination is sought that the judgment is not recognizable in California under the act, that a court has personal jurisdiction over that person or entity if the publication at issue was published in California, and the defendant has assets in California that might be subject to an enforcement proceeding to satisfy the foreign-country defamation judgment or may have to take actions in California to comply with the foreign-country defamation judgment.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1716 of the Code of Civil Procedure is
- 2 amended to read:
- 3 1716. (a) Except as otherwise provided in subdivisions (b)
- 4 and (c), a court of this state shall recognize a foreign-country
- 5 judgment to which this chapter applies.
- 6 (b) A court of this state shall not recognize a foreign-country
- 7 judgment if any of the following apply:
- 8 (1) The judgment was rendered under a judicial system that
- 9 does not provide impartial tribunals or procedures compatible with
- 10 the requirements of due process of law.
- 11 (2) The foreign court did not have personal jurisdiction over
- 12 the defendant.
- 13 (3) The foreign court did not have jurisdiction over the subject
- 14 matter.

1 (c) A court of this state is not required to recognize a
2 foreign-country judgment if any of the following apply:

3 (1) The defendant in the proceeding in the foreign court did not
4 receive notice of the proceeding in sufficient time to enable the
5 defendant to defend.

6 (2) The judgment was obtained by fraud that deprived the losing
7 party of an adequate opportunity to present its case.

8 (3) The judgment or the cause of action or claim for relief on
9 which the judgment is based is repugnant to the public policy of
10 this state or of the United States.

11 (4) The judgment conflicts with another final and conclusive
12 judgment.

13 (5) The proceeding in the foreign court was contrary to an
14 agreement between the parties under which the dispute in question
15 was to be determined otherwise than by proceedings in that foreign
16 court.

17 (6) In the case of jurisdiction based only on personal service,
18 the foreign court was a seriously inconvenient forum for the trial
19 of the action.

20 (7) The judgment was rendered in circumstances that raise
21 substantial doubt about the integrity of the rendering court with
22 respect to the judgment.

23 (8) The specific proceeding in the foreign court leading to the
24 judgment was not compatible with the requirements of due process
25 of law.

26 ~~(9) The cause of action resulted in a defamation judgment~~
27 ~~obtained in a jurisdiction outside the United States, unless the court~~
28 ~~in this state first determines that the defamation law applied in the~~
29 ~~foreign court's adjudication provided at least as much protection~~
30 ~~for freedom of speech and the press in that case as would be~~
31 ~~provided by both the United States and California Constitutions.~~

32 *(9) A court of this state has determined that the defamation law*
33 *applied by a foreign court in adjudicating a claim of defamation*
34 *does not provide at least as much protection for freedom of speech*
35 *and the press as provided by both the United States and California*
36 *Constitutions.*

37 (d) If the party seeking recognition of a foreign-country
38 judgment has met its burden of establishing recognition of the
39 foreign-country judgment pursuant to subdivision (c) of Section
40 1715, a party resisting recognition of a foreign-country judgment

1 has the burden of establishing that a ground for nonrecognition
2 stated in subdivision (b) or (c) exists.

3 SEC. 2. Section 1717 of the Code of Civil Procedure is
4 amended to read:

5 1717. (a) A foreign-country judgment shall not be refused
6 recognition for lack of personal jurisdiction if any of the following
7 apply:

8 (1) The defendant was served with process personally in the
9 foreign country.

10 (2) The defendant voluntarily appeared in the proceeding, other
11 than for the purpose of protecting property seized or threatened
12 with seizure in the proceeding or of contesting the jurisdiction of
13 the court over the defendant.

14 (3) The defendant, before the commencement of the proceeding,
15 had agreed to submit to the jurisdiction of the foreign court with
16 respect to the subject matter involved.

17 (4) The defendant was domiciled in the foreign country when
18 the proceeding was instituted or was a corporation or other form
19 of business organization that had its principal place of business
20 in, or was organized under the laws of, the foreign country.

21 (5) The defendant had a business office in the foreign country
22 and the proceeding in the foreign court involved a cause of action
23 or claim for relief arising out of business done by the defendant
24 through that office in the foreign country.

25 (6) The defendant operated a motor vehicle or airplane in the
26 foreign country and the proceeding involved a cause of action or
27 claim for relief arising out of that operation.

28 (b) The list of bases for personal jurisdiction in subdivision (a)
29 is not exclusive. The courts of this state may recognize bases of
30 personal jurisdiction other than those listed in subdivision (a) as
31 sufficient to support a foreign-country judgment.

32 ~~(c) A court of this state has personal jurisdiction over any person
33 who obtains a judgment in a defamation proceeding outside the
34 United States against any person who is a resident of California,
35 or is a person or entity amenable to jurisdiction in California who
36 has assets in California or may have to take actions in California
37 to comply with the judgment, for the purposes of rendering
38 declaratory relief with respect to that person's liability for the
39 judgment, or for the purpose of determining whether the judgment
40 should be deemed nonrecognizable pursuant to Section 1716, to~~

1 the fullest extent permitted by the United States Constitution, if
2 both of the following apply:

3 (1) ~~The publication at issue was published in California.~~

4 (2) ~~That resident, or person amenable to jurisdiction in~~
5 ~~California, either (A) has assets in California that might be used~~
6 ~~to satisfy the foreign defamation judgment, or (B) may have to~~
7 ~~take actions in California to comply with the foreign defamation~~
8 ~~judgment.~~

9 The provisions of this subdivision shall apply to persons who
10 obtained judgments in defamation proceedings outside the United
11 States both prior to, and after, January 1, 2010.

12 (c) *If a judgment was rendered in an action for defamation in*
13 *a foreign country against a person who is a resident of California*
14 *or a person or entity amenable to jurisdiction in California, and*
15 *declaratory relief with respect to liability for the judgment or a*
16 *determination that the judgment is not recognizable in California*
17 *under Section 1716 is sought, a court has personal jurisdiction*
18 *over that person or entity if both of the following apply:*

19 (1) *The publication at issue was published in California.*

20 (2) *The person who is a resident, or the person or entity who is*
21 *amenable to jurisdiction in California, either (A) has assets in*
22 *California that might be subject to an enforcement proceeding to*
23 *satisfy the foreign-country defamation judgment, or (B) may have*
24 *to take actions in California to comply with the foreign-country*
25 *defamation judgment.*

26 This subdivision shall apply to persons who obtained judgments
27 in defamation proceedings in a foreign country both prior to and
28 after January 1, 2010.